

REMARKS/ARGUMENTS

By the foregoing amendment, claims 14 and 18 have been cancelled, claim 13 has been amended, claim 15 has been amended to depend from claim 13, claim 16 has been rewritten in independent form and amended, Claim 17 has been amended, claim 19 has been amended to depend from claim 17 and claim 20 has been rewritten in independent form and amended. Claims 23 and 24 are added.

The various rejections of the claims based on an anticipation by or being obvious over Zegler U.S. patent No. 5,567,497 and Zegler in view of certain secondary and tertiary references are respectfully traversed. In the Examiner's response to the arguments previously presented in the Brodeur Declaration, the Examiner states that it is "well established in the carpet art that carpet tiles...are susceptible to curling or doming". The Examiner also states in paragraph 12 that the declaration "establishes the carpet tiles of Zegler exhibit curl, while the present carpet tiles do not". By virtue of those statements, claims 13, 15, 16 and 23 distinguish from Zegler because the Zegler carpet tile curls and applicants' carpet tile is substantially void of curling or doming. Consequently Zegler cannot anticipate these claims under 35 U.S.C. 102. The Examiner goes on to point out that the lack of curling in the present invention is a result of certain process steps in the manufacture of the claimed carpet tile and particularly that the difference between Zegler and the present invention is not necessarily "due solely to the process step of foaming *in situ* versus preformed foam, but rather the declaration establishes the process temperature is also critical in eliminating curling in the tile

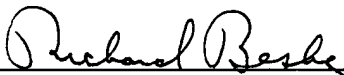
product." That the difference is brought about by a method of construction does not diminish the fact that the resulting products are different as admitted by the Examiner and as the expert opinion of Mr. Brodeur so states. The limitation in the claims therefor that the carpet tile is substantially void of curling or doming distinguishes from the Zegler reference and the secondary and tertiary references do not make up for that deficiency. That limitation in the claim must be treated and considered as any other limitation distinguishing the claimed subject matter from the prior art. Having established that the Zegler carpet tiles curl or dome, there is no basis in the applied prior art for concluding the obviousness of carpet tiles which are substantially void of curling or doming . Also, there is no requirement that applicant include a so-called "critical" process temperature in the claim to eliminate curling since the claimed final product is substantially void of curling.

However, to further the prosecution of this application, applicants have amended claims 13, 16, 17 and 20 to include a temperature limitation. For example claim 13 requires the preformed foam layer with foam nodules to be held in intimate contact with the smooth back face by an adhesive fused at a temperature sufficiently low to preclude collapse of the foam nodules thereby forming a carpet tile substantially void of curling or doming. Thus the adhesive referenced in claim 13 is fused at a temperature sufficiently low to preclude collapse of the foam nodules. Claim 17 is similar. Claims 16 and 20 require a layer with foam nodules to be held in contact with the smooth back face and fused thereto at a temperature substantially maintaining the foam nodules in a non-

collapsed condition. Similarly claim 20. Thus, while applicants believe that these limitations are not necessary for patentability, applicants have included those limitations in the claims to further the prosecution. Having admitted that the Zegler reference provides carpet tiles which curl and that the declaration establishes the present carpet tiles do not curl and also by including the temperature limitation in the independent claims, applicants submit the application is now in condition for allowance and early notification of the allowance thereof is respectfully requested.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: 
Richard G. Besha
Reg. No. 22,770

RGB:pfc
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100